



Signature Report

Ordinance 19042

Proposed No. 2019-0437.1

Sponsors Upthegrove, Kohl-Welles and
McDermott

1 AN ORDINANCE renewing and extending a six-month
2 moratorium prohibiting the establishment of new or
3 expansion of existing major fossil fuel facilities.

4 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 SECTION 1. Findings:

6 A. King County has the authority, under to constitutional police powers, home
7 rule authority, the Shoreline Management Act of 1971, chapter 90.58 RCW, and the
8 Washington state Growth Management Act, including chapter 36.70A RCW ("the
9 GMA"), to establish and renew a moratorium to preclude the acceptance of certain new
10 development applications while the county studies related land use issues.

11 B. The scientific consensus is that warming of the earth's climate is occurring at
12 an unprecedented rate due to anthropogenic greenhouse gas emissions driven by human
13 activities and population growth according to the Intergovernmental Panel on Climate
14 Change Sixth Assessment Report.

15 C. The state of Washington found significant environmental, economic, public
16 safety and public health impacts resulting from climate change on this state, in both
17 chapter 80.80 RCW and Executive Order No. 14-04.

18 D. The state of Washington and King County are threatened by impacts resulting
19 from climate change, including warming temperatures, sea level rise on coastal

20 communities, diminishing snowpack and water availability, ocean acidification and forest
21 decline.

22 E. King County and thirty-nine cities adopted as part of the countywide planning
23 policies shared countywide targets in 2014 to reduce greenhouse gas emissions by fifty
24 percent by 2030 and eighty percent by 2050 against a 2007 baseline.

25 F. The King County council unanimously adopted the 2015 King County
26 Strategic Climate Action Plan in November 2015 under Motion 14449, including goals,
27 targets and priority actions to meet these shared emission reduction targets.

28 G. Fossil fuels, including petroleum, coal and natural gas, are a major source of
29 carbon dioxide, heavy metals, nitrogen oxide and sulfur dioxide, contributing to climate
30 change and environmental pollution.

31 H. On numerous occasions across the United States and Canada, spills of crude
32 oil from train derailments and tanker ships and natural gas pipeline explosions have
33 caused numerous fatalities and illnesses, substantial loss of property and significant
34 environmental damage.

35 I. King County has grave concerns about the safety of the public and
36 environment, and the strain on public services and existing infrastructure resulting from
37 the siting and operation of new major fossil fuel facilities.

38 J. In 2017, movement of crude oil and petroleum products through Washington
39 state by rail had reached fifty-four million barrels of oil compared to no oil being moved
40 by rail before 2012, and one hundred seventy-seven million barrels moved by pipeline
41 within the state, a twenty-seven percent increase since 2006.

42 K. New major fossil fuel facilities create significant public health risks, including

43 air polluting resulting in impaired respiratory functions from fine particulates, noise
44 pollution affecting hearing loss and psychological health and exposure to heavy metals
45 and contaminated drinking sources resulting in cancers, premature death and lung and
46 heart diseases.

47 L. New major fossil fuel facilities pose a threat to King County's ecology,
48 including extensive land disturbing activities that impact natural ecosystems,
49 contamination of surface water and aquifers, sedimentation of rivers and streams, seismic
50 and geological instability and destruction of critical habitat for wildlife.

51 M. New and expanded major fossil fuel facilities and related land uses will
52 generate increased vehicle trips, noise, dust, debris and odor. The impacts of new major
53 fossil fuel facilities in unincorporated King County has not been fully investigated.

54 N. In *Quinault Indian Nation v. Imperium Terminal Services LLC*, 187 Wn.2d
55 460 (2017), the Washington Supreme Court held that the Ocean Resources Management
56 Act ("the ORMA") applied to a land-based petroleum terminal facility. Previous
57 decisions had limited the scope of the ORMA to on-water uses. The court recognized
58 that the ORMA is intended to address environmental threats to Washington's coastal
59 waters and threats posed by increased expansion of the fossil fuel industry along the
60 Pacific Coast and held that it must be applied to a terminal expansion project that would
61 transfer millions of gallons of petroleum products across the threshold of Washington's
62 coast. King County should evaluate whether the ORMA should also be applied to
63 projects within its jurisdiction. If the ORMA is determined not to apply, King County
64 should evaluate whether it should adopt substantively similar local regulations.

65 O. Local governments have core responsibilities for upholding the public health,

66 safety and welfare, mitigating and preparing for disasters, protecting and preserving
67 natural systems and supporting economic development.

68 P. King County is preparing an update of the Comprehensive Plan, scheduled to
69 be adopted in June 2020. As part of the 2020 Comprehensive Plan update, King County
70 is reviewing major fossil fuel facilities and related land uses in unincorporated King
71 County to ensure that the range of impacts from major fossil fuel facilities are identified,
72 avoided and mitigated in order to protect public health and safety, air and water quality,
73 habitats, natural resource lands and other resources and functions.

74 Q. It is in the public interest that any land use, zoning and development
75 regulations are consistent with the King County Comprehensive Plan, the Shoreline
76 Management Act, the State Environmental Policy Act, the Growth Management Act and
77 other environmental and land use laws.

78 R. On January 28, 2019, in accordance with RCW 36.70A.390 and RCW
79 90.58.590, the county council adopted Ordinance 18866 as an emergency, declaring a
80 six-month moratorium prohibiting the establishment of new or expansion of existing
81 major fossil fuel facilities.

82 S. Following the adoption of the moratorium, the executive transmitted the
83 required study addressing the issues and circumstances necessitating the moratorium.

84 T. The detailed study identifies proposed policy and code amendments that are
85 consistent with and implement the direction in Ordinance 18866 and the 2020
86 Comprehensive Plan Scope of Work adopted by Motion 15329.

87 U. RCW 90.58.590 authorizes two six-month extensions of an original
88 moratorium, and on July 10, 2019, the council extended the original moratorium for six

89 months in accordance with the statute.

90 V. In order to continue to fully investigate whether existing regulations and
91 policies sufficiently protect public health and the county's natural ecosystems, surface
92 water, and geology, and whether additional regulations are necessary to properly mitigate
93 such impacts, it is in the public interest to renew the moratorium on the acceptance of
94 applications for development or expansion of major fossil fuel facilities and the
95 establishment of new or expansion of existing major fossil fuel facilities for a six-month
96 period.

97 SECTION 2. A. Commencing on January 25, 2020, the moratorium declared
98 under Ordinance 18866 and renewed and extended by Ordinance 18946 on the
99 acceptance of applications for the establishment of new or expansion of existing, which is
100 increasing the size, quantity or scope, of major fossil fuel facilities in unincorporated
101 King County is hereby renewed and extended for an additional six months. An
102 application shall not be accepted and a building permit, occupancy permit, department of
103 public health approval, other development permits or approval of any kind shall not be
104 issued for any of the purposes or activities prohibited by this ordinance. Any applications
105 for land use approvals or other permits that are accepted as a result of error or by use of
106 vague or deceptive descriptions during the moratorium are null and void and without
107 legal force or effect. All lawfully existing uses, structures or other developments may
108 continue to be deemed lawful conforming uses and may continue to be maintained,
109 repaired and redeveloped, so long as the use is not expanded, under the terms of the land
110 use and shoreline rules and regulations in place at the time of the moratorium. This
111 moratorium shall not apply to uses and facilities necessary to address a bona fide

112 imminent threat to the public health, safety and welfare. This moratorium shall also not
113 apply to uses and facilities necessary for public safety, including, but not limited to,
114 police, fire and rescue agencies.

115 B. During the moratorium, the council shall consider the executive's study of
116 major fossil fuel facilities identified in Ordinance 18866, Section 2.C.

117 SECTION 3. For the purposes of this ordinance:

118 A. "Fossil fuels" means petroleum and petroleum products, coal, and natural gas,
119 such as methane, propane and butane, derived from prehistoric organic matter and used to
120 generate energy. Fossil fuels do not include by-products such as asphalt, plastics,
121 fertilizers, paints, or denatured ethanol.

122 B.1. "Major fossil fuel facilities" means:

123 a. large-scale uses and facilities engaged in the wholesale distribution,
124 extraction, refinement or processing of fossil fuels;

125 b. terminals engaged in the bulk movement of fossil fuels, excluding railyards,
126 fuel storage for airports and marine servicing facilities; and

127 c. bulk storage of fossil fuels in excess of two million gallons.

128 2. "Major fossil fuel facilities" do not provide direct sale or distribution to
129 consumers.

130 SECTION 4. Severability. If any provision of this ordinance or its application to
131 any person or circumstance is held invalid or should any portion of this ordinance be

132 preempted by state or federal law or regulation, the remainder of the ordinance or the
133 application of the provision to other persons or circumstances is not affected.
134

Ordinance 19042 was introduced on 10/16/2019 and passed by the Metropolitan King County Council on 12/11/2019, by the following vote:

Yes: 6 - Mr. Gossett, Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci
No: 3 - Mr. von Reichbauer, Ms. Lambert and Mr. Dunn



KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

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Rod Dembowski, Chair

ATTEST:

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Melani Pedroza, Clerk of the Council

APPROVED this 19 day of DECEMBER, 2019.

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Dow Constantine, County Executive

Attachments: None

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CLERK
KING COUNTY COUNCIL